

STATEMENT OF PURPOSE**RS25050C1**

This bill amends section 12-121, Idaho Code, regarding the award of attorney fees in civil cases. On September 28, 2016, in a split decision, the Idaho Supreme Court issued a decision in the case of Hoffer v. Shappard, which changed a decades old interpretation of section 12-121. As originally drafted in 1976, the section gave the courts discretion to award attorney fees to prevailing parties. In 1979, the Supreme Court took that discretion and by court rule limited the award of attorney fees to cases which were brought, pursued or defended frivolously, unreasonably or without foundation. The effect was that litigants for the most part have paid their own attorney fees unless the court found the claim or defense was brought or pursued frivolously, unreasonably or without foundation, or unless attorney fees were otherwise provided for by a different statute or by contract. This structure has worked to protect citizens' access to the courts, while penalizing those who sue or defend frivolously. The Court in Hoffer prospectively rescinded its own rule, effective March 1, 2017, and applied a new interpretation of section 12-121 to award attorney fees to the prevailing party "when justice so requires." This places the award of attorney fees in the discretion of each judge without, resulting in uncertainty to litigants, and potentially chilling access to courts due to that uncertainty, and promoting judge shopping. The proposed amendment restores the rule of awarding attorney fees when cases are brought, pursued or defended frivolously, unreasonably, or without foundation, and places it in statute.

FISCAL NOTE

No fiscal impact to the General Fund. It has no fiscal impact because the amendment is consistent with current practice.

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DISCLAIMER: This statement of purpose and fiscal note are a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside of the legislative process, including judicial review (Joint Rule 18).